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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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HM12/1011

EXAMINER

PATTEN, P

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 10/11/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/604,158

Applicant(s)

Bessette, S.M.

Examiner

Patricia Patten

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jul 26, 2001
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 7, and 11-15 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 7, and 11-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7
- 18) ☐ Interview Summary (PTO-413) Paper No(s)
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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DETAILED ACTION

Claims 1, 7, and 11-15 are pending in the application and were presented for examination on the merits.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Claims 1 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Bessette et al. (US 6,183,767). Claims 1 and 11 are drawn to a composition comprising two compounds along with a carrier such as eugenol and terpineol and a method for controlling mites with such a composition.

Bessette et al. (US 6,183,767) disclosed blends of known acaricidal compounds such as benzyl alcohol and eugenol or cinnamic alcohol and eugenol admixed with inert carriers as a pesticide beneficial toward mites (Please see claim 4 for example).

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Claims 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Kubota et al. (JP 04091003-A). Claims 13 and 14 are drawn to a pesticidal composition for the control of house dust mites comprising a plant essential oil such as eugenol admixed with a carrier. Claims are further drawn to specific oils such as eugenol and thymol for example.

Kubota et al. (JP 04091003-A) disclosed that eugenol was an effective dust mite (Acaridae) controlling agent (Abstract). Kubota et al. further taught that the eugenol could have been admixed with a carrier, and used as an emulsion, powder, dust, aerosol, fumigant or bait in order to treat areas of infestation (Abstract).

Claim Rejections - 35 USC § 103

Claims 1, 7 and 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zocchi et al. (US 6,080,792).

Zocchi et al. specifically taught that compounds such as methyl salicylate, benzyl acetate, benzyl alcohol, terpineol, carvone, amyl salicylate, terpineol, citronella and piperonyl butoxide were all known acaricidal agents (col.8, lines 42-53, col.4, lines 46-56) and Example 1, col.9). Acari are arachnids which include mites and ticks. This is confirmed from the disclosure of Zocchi et al. the patent which taught that 'acaricidal'

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meant the killing of dust mites (please see Abstract and col.9 line 28- 'The acaricidal test for mites....').

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine piperonyl butoxide with an agent such as amyl salicylate or benzyl alcohol (i.e. Claims 7 and 15), or alternatively other known mite killing agents such as methyl salicylate and amyl salicylate (i.e; Claim 1) since each is well known in the art for their claimed purpose and for the following reasons. This rejection is based on the well established proposition of patent law that no invention resides in combining old ingredients of known properties where the results obtained thereby are no more than the additive effect of the ingredients, *In re Sussman*, 1943 C.D. 518. Applicants invention is predicated on an unexpected result, which typically involves synergism, an unpredictable phenomenon, highly dependent upon specific proportions and/or amounts of particular ingredients. Any mixture of the components embraced by the claims which does not exhibit an unexpected result (e.g., synergism) is therefore obvious.

Accordingly, the instant claims, in the range of proportions where no unexpected results are observed, would have been obvious to one of ordinary skill having the above cited references before him.

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From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

No Claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

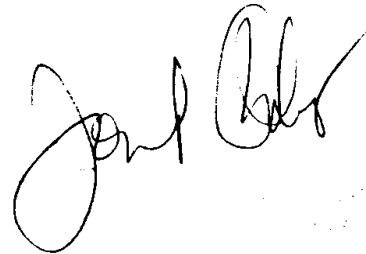
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Patricia Patten, whose telephone number is (703)308-1189. The examiner can normally be reached on M-F from 9am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

A handwritten signature in black ink, appearing to read "Jonathan Chalk". The signature is stylized with a large, looping initial "J" and a distinct "C" for the last name.